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## FACSIMILE TRANSMITTAL

## TO:

Name: Mail Stop Petition

Firm: U.S. Patent &amp; Trademark Office

Fax No.: 571-273-8300

Subject: U.S. Patent Application No. 10/090,506  
Gary K. Michelson

Filed: February 27, 2002

MILLING INSTRUMENTATION AND METHOD  
FOR PREPARING A SPACE BETWEEN  
ADJACENT VERTEBRAL BODIES

Attorney Docket No. 101.0054-03000

Customer No. 22882

Confirmation No.: 7817

## FROM:

Name: Amedeo F. Ferraro

Phone No.: 310-286-9800

No. of Pages (including this): 4

Date: March 16, 2006

Confirmation Copy to Follow: NO

## Message:

## CERTIFICATE OF TRANSMISSION UNDER 37 CFR 1.8

I hereby certify that the attached Petition for Revival of an Application for Patent Abandoned Unintentionally Under 37 C.F.R. § 1.137(b) (\$1,500.00 Petition fee is to be charged to Deposit Account No. 50-1068; and total amount of \$1,700.00 to cover the \$1,400 issue and \$300 publication fee is to be charged to Deposit Account No. 50-3726) is being facsimile transmitted to the U.S. Patent and Trademark Office on March 16, 2006.



Sandra L. Blackmon

03/20/2006 BABRAHA2 00000072 503726 10090506

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PATENT  
 Attorney Docket No. 101.0054-03000  
 Customer No. 22882

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: )  
 Gary K. Michelson )  
 Serial No.: 10/090,506 )  
 Filed: February 27, 2002 )  
 For: MILLING INSTRUMENTATION )  
 AND METHOD FOR PREPARING )  
 A SPACE BETWEEN ADJACENT )  
 VERTEBRAL BODIES )

Confirmation No.: 7817

Group Art Unit: 3731

Examiner: Uyen Ho

(Issue Fee paid December 22, 2005)

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MS PETITION  
 Commissioner for Patents  
 P.O. Box 1450  
 Alexandria, VA 22313-1450

Sir:

**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT  
 ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)**

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the Office notice or action plus any extensions of time actually obtained.

Applicant hereby petitions for revival of this application

1. Petition Fee

- ☐ Small entity – fee \$\_\_\_\_\_ (37 CFR 1.17(m)). Applicant claims small entity status. See 37 CFR 1.27.  
☒ Other than small entity – fee \$1,500.00 (37 CFR 1.17(m)) is to be charged to Deposit Account No. 50-1068.

2. Reply and/or fee

- A. The reply and/or fee to the above-noted Office action in the form of payment of the Issue Fee:

- ☒ has been filed previously on December 22, 2005.  
☐ is enclosed herewith.

- B. The issue and publication fees in the total amount of \$1,700.00:

- ☐ has been paid previously on \_\_\_\_\_  
☒ is to be charged to Deposit Account No. 50-3726.

3. Terminal disclaimer with disclaimer fee

- ☐ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.
- ☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ \_\_\_\_\_ for a small entity or \$ \_\_\_\_\_ for other than a small entity) disclaiming the required period of time is enclosed herewith.

4. **STATEMENT:** The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional.

- a. The payment of the Issue Fee and Publication Fee for the above identified application was due January 4, 2006.
- b. On December 22, 2005, applicant's representatives submitted the Fee Transmittal authorizing the Issue Fee and Publication Fee to be charged to Deposit Account no. 50-1068.
- c. Due to an accounting error by applicant's representatives for reasons including overcharges made by the PTO to the deposit account in other applications being prosecuted by applicant's representatives, insufficient funds were available on December 22, 2005.
- d. Applicant's representatives did not know that at the time of the submission of the Fee Transmittal that insufficient funds were available in the Deposit Account no. 50-1068.
- e. On December 28, 2005, as part of the normal course of replenishing its deposit accounts, applicant's representatives deposited \$25,000.00 in deposit account 50-1068 by Electronic Funds Transfer (EFT) so that these funds would be immediately available.
- f. Between December 28, 2005 and January 4, 2006, the amount of the Issue Fee and Publication Fee was available in deposit account 50-1068.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application, any patent issuing thereon, or any patent to which this verified statement is directed.

If there are any other fees due in connection with the filing of this response, including any fees required for an extension of time under 37 CFR § 1.136, such an

extension is requested, and the Commissioner is authorized to charge any related fees to our Deposit Account No. 50-1068.

Respectfully submitted,

MARTIN & FERRARO, LLP

Dated: March 16, 2006

By

  
Amedeo F. Ferraro  
Registration No. 37,129

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